



HOUSE ARMED SERVICES COMMITTEE DUNCAN HUNTER – CHAIRMAN

PRESS RELEASE

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House Armed Services Committee Hearing Focuses on White House Legislative Initiative to Try Detainees

Witnesses Stress Need for Balanced Approach that Preserves National Security

Washington, D.C. — In the wake of a new White House legislative proposal for military commissions, witnesses testifying today before the House Armed Services Committee about the military commission process largely agreed with Chairman Duncan Hunter's observation that the final legislative framework should allow for the fair and effective prosecution of enemy terrorists, while preserving the ability of our warfighters to operate effectively on the battlefield. The six-witness panel consisted of each of the four military services' top military lawyers, or Judge Advocate Generals, as well as the Justice Department's Acting Assistant Attorney General and legal counsel to the Chairman of the Joint Chiefs of Staff.

In his opening remarks, Hunter (R-CA), emphasized that "balancing these two requirements means that we must pay special attention to the rules of evidence and the procedures used in any military commission process. My interest is to protect our troops on the battlefield from becoming involved in a legal quagmire which could prevent us from effectively pursuing terrorists and also to ensure that America can effectively protect its citizens. Our foremost consideration should be protecting American troops and American citizens."

Further noting that the war against terror has produced a new type of battlefield and a new type of enemy, Hunter said that a "fair process has two guiding principles: first, the government must be able to present its case fully and without compromising its intelligence sources or compromising military necessity; and, second, the prosecutorial process must be done fairly, swiftly and conclusively."

Hunter invited the witnesses to comment on the White House-proposed legislation, which was submitted to Congress on Wednesday. It follows the Supreme Court's June 29, 2006, ruling that military commissions established by the President lack the power to proceed because they do not comply with the Uniform Code of Military Justice (UCMJ) and Common Article 3 of the Geneva Conventions.

In his prepared remarks, Acting Assistant Attorney General Steven G. Bradbury explained that the Administration “believes that the draft legislation must address the Supreme Court’s ruling in *Hamdan* that Common Article 3 of the Geneva Conventions applies to our armed conflict with al Qaeda,” noting that “the United States has never before applied Common Article 3 in the context of an armed conflict with international terrorists.”

Regarding the Administration’s proposal, Maj. Gen. Charles Dunlap, Jr., Deputy Judge Advocate General of the Air Force, stated that “many of the processes can be readily adapted to meet the needs of the military commissions and at the same time meet the requirements of Common Article 3 of the Geneva Conventions. The proposal submitted to Congress by the President reflects an attempt to adapt the UCMJ [Uniformed Code of Military Justice] to the military commission process. I personally support many, if not most, of its provisions.”

Brigadier General James Walker, Staff Judge Advocate to the Commandant of the Marine Corps, said in his opening comments that “striking the balance between individual due process and our national security interests, while maintaining our nation’s flexibility in dealing with terrorists and unlawful enemy combatants we encounter on the battlefield is the end we all seek. At the end of the day, the system we create must provide the ‘judicial guarantees which are recognized as indispensable by civilized peoples,’ as required by Common Article 3 of the Geneva Conventions.”

Rear Admiral Bruce McDonald, The Judge Advocate General of the Navy, noted in his opening remarks ongoing work with the Executive Branch to formulate a bill that would provide a permanent, legal framework for military commissions, and said, “I recommend that legislation establish the jurisdiction of military commissions, set baseline standards of structure, procedure, and evidence consistent with U.S. law and the law of war and prescribe all substantive offenses. The legislation should further authorize the President to promulgate supplemental rules of practice, similar to the Manual for Courts-Martial or, in this case, a Manual for Military Commissions. The legislation proposed by the President generally accomplishes those goals.”

Air Force Colonel Ronald Reed, Legal Counsel to the Chairman of the Joint Chiefs of Staff, said that Hunter’s concerns about hearsay, coercion and access to classified information were adequately addressed in the proposed legislation. “I am comfortable that the balance established in the legislation meet the requirements of fundamental fairness that you talked about in the beginning, Chairman Hunter, and also at the same time allows us to operate effectively on the battlefield. We feel that the language in the legislation, the protections that are articulated in the legislation, particularly with respect to the issues you articulated – hearsay, coercion and access to classified information – provide the appropriate balance as well as providing a stopgap safeguard of a military judge making decisions based upon the rules as presented.”

Several of the witnesses agreed with Major General Scott Black, The Judge Advocate General of the Army, who said that while the Administration’s proposal included a great number of safeguards, he remained concerned about excluding access to classified evidence from the accused. “I believe the accused should see that evidence,” said Maj. Gen. Scott Black. Later, after recommending two changes regarding access to classified evidence, he remarked, “Overall

I am satisfied that the legislative package as it exists now satisfies our obligations under international law.”

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